

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 644 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? Yes

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the
Civil Judge? No

PUNDHARA GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

Shri A.J. PATEL, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader, for
Respondent Nos.1 and 2.

Shri A.R. LAKHIA, Advocate, for Respondent No. 3.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/03/96

ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 29th September 1995 in exercise of its revisional powers under section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) is under challenge in this petition under Articles 226 and 227 of the Constitution of India. Thereby respondent No.1 set aside the order passed by the Collector of Mehsana (respondent No.2 herein) on 25th March 1993 at the instance of the heirs and legal representatives of original respondent No.3 herein. By his order passed on 25th March 1993, respondent No.2 rejected the application made by original respondent No.3 for regularisation of his encroachment with respect to the subject-matter of this petition.

2. It is not necessary to set out in detail the facts giving rise to this petition. Suffice it to say that original respondent No.3 applied to respondent No.2 herein for regularisation of his encroachment on the subject-matter of this petition. It appears that by his order passed on 25th March 1993 that application came to be rejected. That aggrieved original respondent No.3. He carried the matter in revision before respondent No.1 herein. It appears that, by the order passed by and on behalf of respondent No.1 on 19th January 1994, the order passed by respondent No.2 herein on 25th March 1993 came to be set aside. That aggrieved the present petitioner. It therefore approached this court by means of one petition bearing Special Civil Application No.2270 of 1994 for questioning the correctness of the order passed by and on behalf of respondent No.1 on 19th January 1994. By the decision rendered by this court on 16th August 1994 in the aforesaid writ petition, the order passed by and on behalf of respondent No.1 herein on 19th January 1994 was quashed and set aside on the ground of breach of the audi alteram partem rule and the matter was remanded to respondent No.1 for passing an appropriate order in accordance with law on merits after issuing a notice to the present petitioner and after hearing the parties. A copy of the aforesaid decision rendered by this court on 16th August 1994 in Special Civil Application No.2270 of 1994 is at Annexure-A to this petition. It appears that none on behalf of the petitioner remained present on 19th May 1995, 15th June 1995, 11th July 1995 and 8th August 1995. It appears that, in the meantime, original respondent No.3 had breathed his last leaving behind him his heirs and legal representatives who were the revisional applicants before respondent No.1. It appears that their Advocate remained present on 8th August 1995 and the matter was heard on that day ex parte against the

present petitioner. It appears that the order in the revisional application was not dictated on that very day. It appears that on behalf of the petitioner herein its Advocate remained present on 7th September 1995 before the concerned officer of respondent No.1 with respect to the hearing of the revisional application preferred by and on behalf of respondent No.3 herein. The present petitioner's Advocate on that day appears to have submitted his written arguments with a list of documents in support of its case in the revisional proceeding. Copies thereof collectively are at Annexure-C to this petition. Thereafter, by the order passed by and on behalf of respondent No.1 herein on 29th September 1995, the revisional application of opponent No.3 herein was accepted and the order passed by respondent No.2 herein on 25th March 1993 was set aside and the encroachment made by original respondent No.3 on the subject-matter of this petition was regularised on certain terms and conditions. Its copy is at Annexure-D to this petition. That aggrieved the present petitioner. It therefore moved respondent No.1 for review of the order at Annexure-D to this petition by means of its application for the purpose made on 27th December 1995. Its copy is at Annexure-B to this petition. It appears that the application at Annexure-B to this petition was not entertained. The petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-D to this petition.

3. It may be pointed out at this stage that Rule in this case was issued on 22nd January 1996 and Notice as to interim relief was made returnable on 12th February 1996. It came to be adjourned from time to time to today. By consent of the learned Lawyers appearing for the parties, this petition is taken up for its hearing and disposal today itself instead of hearing only as to the question of interim relief.

4. On behalf of respondent No.3, an affidavit-in-reply has been filed by respondent No.3/6. He has resisted this petition on various grounds.

5. Learned Advocate Shri Lakhia for respondent No.3 is right in his submission that no good ground was shown by or on behalf of the petitioner's Advocate for remaining absent on 8th August 1995 when the revisional proceeding was kept for hearing by and on behalf of respondent No.1 herein. Learned Advocate Shri Lakhia has brought to my notice an application made by the petitioner's Advocate on 7th September 1995 in the aforesaid revisional

proceeding to the effect that the matter was kept for hearing on 9th August 1995 and on that day the Sarpanch of the present petitioner - Panchayat had gone out of his village for his personal work and its Advocate could not remain present on account of agitational strike resorted to by Advocates to protest against rise in court fees. A copy of the aforesaid application made by the present petitioner's Advocate on 7th September 1995 is at Annexure-F to the affidavit-in-reply.

6. It transpires from the impugned order at Annexure-D to this petition that hearing of the matter was kept on 8th August 1995 and not on 9th August 1995. The ground given for remaining absent on 9th August 1995 would be of no consequence or significance for justifying the absence of the Sarpanch of the present petitioner - Panchayat or its Advocate on 8th August 1995.

7. If the impugned order at Annexure-D to this petition was passed on 8th August 1995 or 9th August 1995, the matter would have ended there and the application at Annexure-F to the affidavit-in-reply would have been of no consequence or significance whatsoever. It transpires from the material on record that the application at Annexure-F to the affidavit-in-reply was accepted by and on behalf of respondent No.1 herein and written arguments together with the list of documents produced on behalf of the present petitioner came to be accepted. If that be so, it became the duty of the author of the impugned order at Annexure-D to this petition to have asked the present petitioner's Advocate to supply a copy of his written arguments together with a copy of the list of documents to respondent No.3 herein or their Advocate or representative appearing before the revisional proceeding. The author of the impugned order at Annexure-D to this petition ought to have thereafter kept the matter for fresh hearing to permit respondent No.3 herein or their Advocate or representative to explain the contents of written arguments submitted by or on behalf of the present petitioner in the aforesaid revisional proceeding. Instead of adopting such a course in consonance with the audi alteram partem rule, strangely enough, the author of the impugned order at Annexure-D to this petition passed the order in question without making any reference whatsoever to written arguments together with the list of documents at Annexure-C to this petition. As pointed out hereinabove, if the order in the revisional proceeding was passed on 8th August or 9th August 1995, non-consideration of the written submissions together with the list of documents at Annexure-C to this petition would have been of no

consequence or significance. However, after accepting them on record, the author of the impugned order at Annexure-D to this petition could not have ignored them. At the same time, an opportunity ought to have been given to respondent No.3 through their Advocate or representative to meet with the case put forward by and on behalf of the present petitioner on 7th September 1995 by means of the written submissions and the list of documents at Annexure-C to this petition. The impugned order at Annexure-D to this petition can therefore be said to be suffering from the vice of non-application of mind on the part of its author qua the written arguments and the list of documents at Annexure-C to this petition and the vice of breach of the rule of audi alteram partem qua respondent No.3 inasmuch as no opportunity was given to them to explain the same.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-D to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceeding to file and for its fresh decision according to law after giving an opportunity of hearing to both the sides.

9. In the result, this petition is accepted. The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 29th September 1995 at Annexure-D to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding in question to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute with no order as to costs.

#####